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Golden Plus Holdings Bhd v Teo Kim Hui & Ors

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HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO WA-24NCC-569–10 OF 2019
AHMAD FAIRUZ J
10 APRIL 2020

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Companies and corporation — Meeting — Extraordinary general meeting ('EGM') — Plaintiff alleged EGM conducted by company was null and void — Whether EGM was valid under s 310 (b) of the Companies Act 2016 — Whether there was express prohibition to disallow two or more members to convene a meeting — Whether term 'members' in s 310 of the Companies Act 2016 meant more than one member — Whether EGM should be made under s 311(3)(a) of the Companies Act — Companies Act 2016 ss 310(b) & 311(3)(a) — Interpretation Acts 1948 and 1967 s 4(3)

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This appeal touched on the new provision introduced under s 310 of the Companies Act 2016 ('the 2016 Act'). It was a determination of whether two or more members of a company were allowed to convene a meeting under s 310(b) of the 2016 Act. The primary issue was the use of the noun 'member' rather than the plural noun of 'members'. The plaintiff filed the originating summon in prayer 1 sought for a declaration that the notice dated 19 September 2019 issued by the first to third defendants ('EGM notice') convening an extraordinary general meeting of Golden Plus Holdings Bhd ('company') was declared null and void as being contrary to s 310(b) of the Companies Act 2016. The EGM notice proposed resolutions to remove the entire board of the company and replaced them with the fourth to sixth defendants who were nominated by the conveners. Upon the commencement of the EGM, one Quek Yiing Huey being the proxy for three members raised a point of order challenging the validity of the EGM notice relying on s 310(b) of the 2016 Act. She contended that the convenor was required to be a single member holding not less than 10% of the issued share capital of the company rather than a composite of various members together holding in aggregate the 10% threshold under the provision. After hearing arguments from members present, the chairman announced that he would be adjourning the EGM to a time and date to be fixed later on purportedly pursuant to article 65 of the company's constitution to ascertain the point of law raised. The chairman, the directors and some members including Quek Yiing Huey being the proxy for three members then left the meeting venue. After the adjournment, those members who remained in the meeting venue purportedly appointed another chairman and held an EGM whereby the resolutions were passed *in toto*. The plaintiff argued that if more than one shareholder desired to requisition a

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meeting, it must be convened under s 311(3)(a) of the 2016 Act. Counsel for the plaintiff further argued that not only was ss 310(b) and 311 different on the use of the word 'members', they also differed on the type of share capital. Section 310(b) used 10% of issued share capital while s 311(3)(a) used 10% of paid up share capital.

Held, dismissing the claim with costs:

(1) Based on s 4(3) of Act 388 and s 310(b) of the 2016 Act did not suffer from an interpretation that excluded the plurality of the word member. Member could include members and vice versa. There was no express prohibition to disallow two or more members to convene a meeting under s 310(b) of the 2016 Act. The court was of the view that the drafters of the 2016 Act in their own wisdom saw it was appropriate to draft s 310(b) in such a manner as s 4(3) of Act 388 would allow an interpretation of the term member to include members (see paras 19 & 24).

(2) By applying the reasoning of the plaintiff, it would mean two or more shareholders could not requisition a meeting of the company on their own volition. They must instead require the directors or the board to requisition a meeting on their behalf. Such an interpretation works against the spirit of the 2016 Act which recognised the different modes of how meetings are convened. It would potentially deny the right of shareholders to convene a meeting. In a scenario where shareholders and the board are in dispute, seeking the board to convene a meeting under s 311 might well be a futile effort. The right to convene a meeting must be unfettered as it was equated with the right of a shareholder to vote. The right to vote was sacrosanct to a member and could not be dispossessed. To require a single member to hold 10% of a company's shares before being able to requisition a meeting would be simply too onerous. While it would be common for institutional members to hold 10% or more shares, it would not be common to have a 13 single individual member to hold 10% of a company's shares especially in public companies where the shareholding spread run into millions of shares. Shareholders whether acting individually or in a group must be empowered to act. It was consonant with the intention of parliament to empower shareholders under the 2016 Act (see paras 26–28, 31 & 33).

(3) It was trite and common understanding that issued share capital essentially spoke of shares that were both paid and not paid. While it might not necessarily mean that all shares were paid for, but for those allotted and paid, it was the paid-up share capital of the company. In terms of classification of shares, they were the same. They were ordinary shares. Only nomenclature distinguishes them (see paras 37–38).

[Bahasa Malaysia summary

Rayuan ini menyentuh peruntukan baru yang diperkenalkan di bawah s 310 Akta Syarikat 2016 ('Akta 2016'). Ini adalah dapatan sama ada dua atau lebih ahli syarikat dibenarkan mengadakan mesyuarat di bawah s 310(b) Akta 2016. Isu utama adalah penggunaan kata nama 'anggota' berbanding kata nama jamak 'anggota-anggota'. Plaintif memfailkan saman pemula melalui *prayer* 1 memohon suatu deklarasi bahawa notis bertarikh 19 September 2019 yang dikeluarkan oleh defendan pertama hingga ketiga ('notis EGM') dalam mengadakan mesyuarat agung luar biasa Golden Plus Holdings Bhd ('syarikat tersebut') diisytiharkan sebagai terbatal dan tidak sah kerana bertentangan dengan s 310(b) Akta Syarikat 2016. Notis EGM mencadangkan resolusi untuk memecat keseluruhan lembaga syarikat dan menggantinya dengan defendan keempat hingga keenam yang dicalonkan oleh ahli mesyuarat. Apabila EGM dimulakan, seorang Quek Yiing Huey yang menjadi proksi kepada tiga anggota mengemukakan persoalan yang mencabar kesahihan Notis EGM berpandukan kepada s 310(b) Akta 2016. Beliau berpendapat bahawa ahli mesyuarat haruslah perlu menjadi seorang anggota yang memegang tidak kurang dari 10% modal saham syarikat yang dikeluarkan berbanding gabungan beberapa anggota bersama-sama memegang keseluruhan siling 10% sepertimana peruntukan tersebut. Setelah mendengar hujah dari anggota-anggota yang hadir, pengerusi mengumumkan bahawa beliau akan menangguhkan EGM ke suatu waktu dan tarikh yang akan ditetapkan kemudian bersesuaian dengan artikel 65 perlembagaan syarikat untuk menentukan persoalan undang-undang yang dibangkitkan. Pengerusi, pengarah-pengarah dan beberapa anggota termasuk Quek Yiing Huey yang menjadi proksi tiga anggota kemudian meninggalkan lokasi mesyuarat. Selepas penangguhan tersebut, anggota-anggota yang masih berada di lokasi mesyuarat kononnya telah melantik pengerusi lain dan mengadakan EGM yang mana resolusi tersebut telah diluluskan secara keseluruhannya. Plaintif berpendapat bahawa sekiranya lebih daripada satu pemegang saham memohon untuk mengadakan mesyuarat, ia mesti diadakan di bawah s 311(3)(a) Akta 2016. Peguamcara bagi pihak plaintif selanjutnya berpendapat bahawa bukan sahaja ss 310(b) dan 311 adalah berbeza pada penggunaan kata 'anggota', malah ianya juga berbeza pada jenis modal saham. Seksyen 310(b) menggunakan 10% modal saham yang dikeluarkan sementara s 311(3)(a) menggunakan 10% modal saham berbayar.

Diputuskan, menolak tuntutan dengan kos:

(1) Berdasarkan kepada s 4(3) Akta 388 dan s 310(b) Akta 2016 tidak mengalami penafsiran yang mengecualikan penggunaan kata jamak anggota. Anggota boleh merangkumi anggota-anggota dan sebaliknya. Tidak ada halangan nyata untuk tidak membenarkan dua atau lebih anggota untuk mengadakan mesyuarat di bawah s 310(b) Akta 2016. Mahkamah berpendapat bahawa penggubal Akta 2016 dengan

kebijaksanaan mereka sendiri berpendapat adalah wajar untuk menggubal s 310(b) dengan cara sebagaimana s 4(3) Akta 388 yang membenarkan tafsiran istilah anggota yang merangkumi anggota-anggota (lihat perenggan 19 & 24).

(2) Dengan mengguna pakai alasan plaintif, ianya bermaksud bahawa dua atau lebih pemegang saham tidak dapat memohon mengadakan mesyuarat syarikat atas kehendak mereka sendiri. Mereka sebaliknya harus memohon pengarah atau ahli lembaga untuk memohon mengadakan mesyuarat bagi pihak mereka. Tafsiran sebegitu adalah bertentangan dengan Akta 2016 yang mengiktiraf pelbagai cara bagaimana mesyuarat boleh diadakan. Ia berpotensi menafikan hak pemegang saham untuk mengadakan mesyuarat. Dalam senario di mana para pemegang saham dan ahli lembaga mempunyai pertikaian, memohon ahli lembaga untuk mengadakan mesyuarat di bawah s 311 mungkin merupakan usaha sia-sia. Hak untuk mengadakan mesyuarat seharusnya tidak dikekang kerana ianya adalah selari dengan hak pemegang saham untuk mengundi. Hak untuk mengundi adalah mustahak kepada seorang anggota dan tidak seharusnya dirampas. Untuk memerlukan seorang ahli memegang 10% saham syarikat sebelum dapat memohon mengadakan mesyuarat adalah amat menyusahkan. Walaupun ianya biasa bagi anggota untuk memegang 10% atau lebih saham, ianya tidak biasa untuk 13 anggota perseorangan untuk memegang 10% saham syarikat terutamanya di syarikat awam di mana pegangan saham meliputi jumlah berjuta-juta saham. Pemegang saham sama ada bertindak secara individu atau berkumpulan mesti diberi kuasa untuk bertindak. Ini bersesuaian dengan niat parlimen untuk memberikan kuasa kepada pemegang saham di bawah Akta 2016 (lihat perenggan 26–28, 31 & 33).

(3) Ianya adalah pemahaman mantap dan umum bahawa modal saham yang dikeluarkan pada dasarnya berkaitan dengan saham berbayar dan tidak berbayar. Walaupun ianya tidak semestinya bermaksud bahawa kesemua saham telah berbayar, tetapi untuk saham yang diperuntukkan dan berbayar, ianya adalah modal saham berbayar syarikat. Dari segi klasifikasi saham, ianya adalah sama. Ia adalah saham biasa. Hanya tatanama yang membezakannya (lihat perenggan 37–38).]

Cases referred to

Dato' Abdul Rahman Dato' Mohammed Hashim & Ors v Mass Media Interactive Sdn Bhd & Ors [2011] 1 CLJ 533, HC (refd)

Granasia Corp Bhd & Ors v Choong Wye Lin (P) & Ors and another case [2015] 1 MLJcivp 130; [2008] 4 CLJ 893, HC (refd)

Indian Corridor Sdn Bhd & Anor v Golden Plus Holdings Bhd [2008] 3 MLJ 653, CA (folld)

Kwan Hung Cheong & Anor v Zung Zang Trading Sdn Bhd [2018] MLJU 213; [2018] 10 CLJ 517, CA (refd)
Seacera Group Berhad v Dato' Tan Wei Lian & Ors [2019] MLJU 470; [2019] 1 LNS 762, HC (refd)
Wintoni Group Bhd v Kang Choon Leu @ Kang Chee Sim [2016] MLJU 409, HC (refd)

Legislation referred to

Companies Act 1965 (repealed by Companies Act 2016) s 145
Companies Act 2016 ss 71, 136, 310, 310(b), 311, 311(3)(a), 312, 313, 314
Interpretation Acts 1948 and 1967 ss 4(3), 17A

K Shanmuga (Kee Hui Yee, Sanjay Mohan and Visvanathan with him) (Kanesalingam & Co) for the plaintiff.
Michael KT Chow (Wendy Yeong with him) (Michael Chow) for the first, second and third defendants.
Mohanadass Kanagasabai (Sameera Hassan with him) (Mohanadass Partnership) for the fourth, fifth and sixth defendants.
Lim Chee Wee (Claudia Cheah Pek Yee and Karen Tan with him) (Skrine) for the seventh and eighth defendants.
Rodney Gan (Sanjay Mohan) for the nineth and tenth defendants.
Alan Adrian Gomez (Mervyn Lai and Joshua Moghana with him) (Tommy Thomas) for the eleventh defendant.

Ahmad Fairuz J:

ABSTRACT

[1] This appeal touches on the new provision introduced under s 310 of the Companies Act 2016 ('the 2016 Act'). It is a determination of whether two or more members of a company are allowed to convene a meeting under s 310(b) of the 2016 Act. The primary issue being the use of the noun 'member' rather than the plural noun of 'members'.

[2] This decision explains the reason why the noun 'member' in s 310(b) permits more than two persons to convene a meeting under the said new provision.

INTRODUCTION

[3] The plaintiff in this action filed the originating summons ('the OS') seeking among others for the following relief at prayer 1:

> A declaration that the Notice dated 19th September 2019 issued by the 1st to 3rd Defendants ('the EGM Notice') convening an Extraordinary General Meeting of

A Golden Plus Holdings Berhad ('the Company') be declared null and void as being contrary to section 310(b) of the Companies Act 2016.

B **[4]** At the conclusion of the hearing, this court disallowed the above mentioned prayer and ruled that the meeting was validly convened by the first, second and third defendants.

[5] The plaintiff, the seventh defendant and the eighth defendant who are aligned with the plaintiff appealed against the dismissal of prayer 1.

C **[6]** For purposes of addressing the parties in this case, Golden Plus Holdings Bhd will be addressed as 'the company'. The first to third defendants who issued the special notice and notice of extraordinary general meeting dated 19 September 2019 ('the EGM notice') shall be addressed as 'the conveners'.

D AGREED FACTS

[7] The agreed facts as can be found in encl 19 are:

E (a) a notice for an extraordinary general meeting dated 12 September 2019 ('the EGM notice') was issued by the first to third defendants who are the following members ('the conveners') of Golden Plus Holdings Bhd ('the company'), each of whom held the following number of shares being the following percentage of shares in the company:

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	Name of Shareholder	Amount of shares	Percentage
1.1	Teo Kim Hui	3,878,500	2.64%
1.2	Teo Han Tong	5,447,900	3.71%
1.3	Lai Su-Chen	7,802,000	5.31%

G (b) the EGM notice proposed resolutions to remove the entire board of the company and replace them with the fourth to sixth defendants who were nominated by the conveners ('the resolutions');

(c) the EGM was convened on 16 October 2019, and Tan Yen Siang was the H chairman of the EGM. Tan Yen Siang was one of four members of the incumbent board present at the EGM and is the fifth defendant in Kuala Lumpur High Court Originating Summons No WA-24NCC-583–10 of 2019 (Suit 583);

I (d) upon the commencement of the EGM, one Quek Yiing Huey being the proxy for three members (including the eighth and tenth defendant herein) raised a point of order challenging the validity of the EGM notice relying on s 310(b) of the Companies Act 2016. She contended that the convenor was required to be a single member holding not less

than 10% of the issued share capital of the company rather than a composite of various members together holding in aggregate the 10% threshold under the provision;

(e) after hearing arguments from members present, the chairman announced that he would be adjourning the EGM to a time and date to be fixed later on purportedly pursuant to article 65 of the company's constitution to ascertain the point of law raised;

(f) the chairman, the directors and some members including Quek Yiing Huey being the proxy for three members then left the meeting venue; and

(g) after the adjournment, those members who remained in the meeting venue purportedly appointed another chairman and held an EGM whereby the resolutions were passed *in toto*.

ANALYSIS OF THE COURT

[8] It is apposite to state that the Companies Act 2016 ('the 2016 Act') provides four modes on how meetings of members can be convened.

[9] The four modes are by:

(a) the board;

(b) a member;

(c) the board at the request of members; and

(d) the court.

[10] It bears emphasis that the drafters of the 2016 Act saw it fit to introduce a new standalone provision found in s 310. The 2016 Act empowers either the board of the company or a member of the company, on their own volition to convene a meeting. This is found under s 310 of the Act. It reads as follows:

> 310 Power to convene meetings of members
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> A meeting of members may be convened by:
>
> (a) the board; or
>
> (b) any member holding at least ten per centum of the issued share capital of a company or a lower percentage as specified in the constitution or if the company has no share capital, by at least five per centum in the number of the members.

[11] Therefore, at their own volition, a board of the company and a member of a company exercising a right to self help, are entitled to convene a meeting.

A In the case of a member wishing to exercise this right, it can be done if the said member meets the statutory threshold of holding the requisite number of shares.

B **[12]** When a member elects to convene a meeting under this provision, the member is responsible to make all the necessary arrangements for the meeting. This includes the issuance of the notices. Apart from ensuring the statutory requirements are met, the member is also responsible for arranging for the venue and bearing the cost of the said meeting (see *Wintoni Group Bhd v Kang Choon Leu @ Kang Chee Sim* [2016] MLJU 409). Section 310(b) is similar to
C s 145 of the Companies Act 1965 ('the 1965 Act').

[13] A meeting can be convened by the board of the company at the request of members. This is found in s 311 of the 2016 Act. This provision must be
D read together with ss 312 and 313 of the 2016 Act. If a meeting is convened by this mode, the company shall bear the organizational cost and will be responsible to issue the requisite notice to call for the meeting.

[14] A court may also convene a meeting of a company. This is found under
E s 314 of the 2016 Act. This can be done by the court on its own initiative, on the application of the directors of the company or members who are entitled to vote or the personal representative of any such member.

F **[15]** The issue for determination by this court focuses on s 310(b) of the 2016 Act. In particular whether a plurality of shareholders making up 10% of the shareholding in the company can validly convene an EGM.

[16] It is the contention of the plaintiff that the meeting convened by the
G conveners was invalid as s 310(b) only allows a single member to requisition for a meeting. It is to be noted that the term 'single member' was emphasised by the plaintiff. However, the actual language found in s 310(b) only uses 'member'.

[17] In considering the arguments, recourse was made by this court to s 4(3)
H of the Interpretation Acts 1948 and 1967 ('Act 388') which reads as follows:

> 4(3) Words and expressions in the singular include the plural, and words and expression in the plural include the singular.

I **[18]** It is axiomatic that this court is entitled to rely on Act 388. There is no prohibition for this court from doing so. Reference to Act 388 should be the first port of call where an interpretation of any law is required. This is consistent with the long title of Act 388 which reads as:

An Act to provide for the commencement, application, construction, interpretation and operation of written laws; to provide for matters in relation to the exercise of statutory powers and duties; and for matters connected therewith.

[19] As such, based on the s 4(3) of Act 388, s 310(b) does not suffer from an interpretation that excludes the plurality of the word member. Member can include members and vice versa. Furthermore, there is no express prohibition to disallow two or more members to convene a meeting under s 310(b) of the 2016 Act.

[20] The application of s 4(3) of Act 388 with regards to the plurality of the word member was approved in the recent decision of the Court of Appeal in *Kwan Hung Cheong & Anor v Zung Zang Trading Sdn Bhd* [2018] MLJU 213; [2018] 10 CLJ 517:

Going by s 4(3) of Act 388, words in the singular include the plural, and vice versa. We are therefore of the opinion that the words 'members' and 'requisitionists' in s 144 of the CA 1965 may be construed to refer to 'member' and 'requisitionist' in the singular in that section, as the case may be. Thus, it cannot be held against the respondent if there is only one requisitionist, and not more than one requisitionist, who made the requisition for the EGM. Be that as it may, having held earlier that the requisition issued by PW1 is invalid, we do not think that this issue.

[21] This was also the position taken in *Granasia Corp Bhd & Ors v Choong Wye Lin (P) & Ors and another case* [2015] 1 MLJcivp 130; [2008] 4 CLJ 893 where the court held a that a single member was competent to requisition a meeting despite the language of s 145 of the 1965 Act which states 'two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than five percentum in number of the members of the company or such lesser number as is provided by the articles may call a meeting of the company.

[22] However, in the case of *Dato' Abdul Rahman Dato' Mohammed Hashim & Ors v Mass Media Interactive Sdn Bhd & Ors* [2011] 1 CLJ 533, the court ruled that a single shareholder cannot requisition a meeting as the provision of s 145 of the Companies Act 1965 expressly states 'two or more shareholders'.

[23] The current drafting of s 310(b) harmonises the rulings in *Granasia* and *Dato' Abdul Rahman* as it allows one or more shareholders to convene a meeting as interpreted under Act 388.

[24] This court is of the view that the drafters of the 2016 Act in their own wisdom saw it appropriate to draft s 310(b) in such a manner as s 4(3) of Act 388 would allow an interpretation of the term member to include members.

[25] In canvassing their point, the plaintiff argued that if more than one shareholder desires to requisition a meeting, it must be convened under s 311(3)(a). It was stressed to this court that this is the only avenue open when two or more members wish to convene a meeting. With respect, this court is unable to accept the argument for the following reasons.

[26] Firstly, by applying the reasoning of the plaintiff, it would mean two or more shareholders cannot requisition a meeting of the company on their own volition. They must instead require the directors or the board to requisition a meeting on their behalf. Such an interpretation works against the spirit of the 2016 Act which recognises the different modes of how meetings are convened.

[27] Such an interpretation would potentially deny the right of shareholders to convene a meeting. In a scenario where shareholders and the board are in dispute, seeking the board to convene a meeting under s 311 may well be a futile effort.

[28] Secondly, the right to convene a meeting must be unfettered as it is equated with the right of a shareholder to vote. The right to vote is sacrosanct to a member and cannot be dispossessed (see *Seacera Group Berhad v Dato' Tan Wei Lian & Ors* [2019] MLJU 470; [2019] 1 LNS 762). This court is also guided by the Court of Appeal decision in *Indian Corridor Sdn Bhd & Anor v Golden Plus Holdings Bhd* [2008] 3 MLJ 653 where the right of shareholders to convene a meeting was described as a valuable right.

[29] This court is further fortified in its view when the 2016 Act introduces a new provision which spells out the powers attached to shares. This is provided in s 71 where it reads as:

> 71 Rights and powers attached to shares
>
> (1) A share in a company, other than preference shares, confers on the holder:
>
> (a) the right to attend, participate and speak at a meeting;
>
> (b) the right to vote on a show of hands on any resolution of the company;
>
> (c) the right to one vote for each share on a poll on any resolution of the company;
>
> (d) the right to an equal share in the distribution of the surplus assets of the company; or
>
> (e) the right to an equal share in dividends authorized by the Board.
>
> (2) Notwithstanding paragraph (1)(e), the right to dividends as specified therein may be negated, altered or added to by the constitution of the company or in accordance with the terms on which the share is issued.

[30] With such clear powers conferred on shareholders, it must *a fortiori*, mean the power to exercise those rights cannot be curtailed by limiting the persons who can convene a meeting under s 310(b).

[31] Thirdly, to require a single member to hold 10% of a company's shares before being able to requisition a meeting would be simply too onerous. While it would be common for institutional members to hold 10% or more shares, it would not be common to have a single individual member to hold 10% of a company's shares especially in public companies where the shareholding spread run into millions of shares.

[32] To put it in perspective, s 136 of the 2016 Act defines a substantial shareholder as 'A person who has an interest in one or more voting shares in a company and the number or the aggregate number of such shares is not less than 5% of the total number of all the voting shares included in the company'. It cannot mean that only a single substantial shareholder who holds at least 10% of the shares can convene a meeting under this provision. Such a rigid interpretation must be avoided.

[33] Fourthly, shareholders whether acting individually or in a group must be empowered to act. This is consonant with the intention of parliament to empower shareholders under the 2016 Act. Section 310(b) which provides for self help, is one such empowering provision. It must *ex necessitae rei* receive a liberal interpretation in order to achieve the object aimed by parliament.

[34] The purpose and object underlying the statute should be heeded. This is prescribed by s 17A of the Act 388 which reads:

> s 17A Regard to be had to the purpose of Act
>
> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

[35] Minority shareholders must be allowed to group together and be permitted to requisition meetings. The interpretation to include more than one member in s 310(b) will dovetail seamlessly with the intention of empowering shareholders.

[36] Counsel for the plaintiff also argued that not only is ss 310(b) and 311 different on the use of the word 'members', they also differ on the type of share capital. Section 310(b) uses 10% of issued share capital while s 311(3)(a) uses 10% of paid up share capital.

A **[37]** It is trite and common understanding that issued share capital essentially speaks of shares that are both paid and not paid. While it may not necessarily mean that all shares have been paid for, but for those allotted and paid, it is the paid up share capital of the company.

B **[38]** In terms of classification of shares, they are the same. They are ordinary shares. Only nomenclature distinguishes them. With respect, this court does not consider this to be a pertinent issue in this current case. Nothing turns on this argument but for an attempt to split hairs to raise it as a separate requirement.

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[39] Treasury shares are simply shares that are bought back by the company which has the effect of reducing the shares in the open market. It is not in circulation and rightly so, it is excluded under s 311.

D **[40]** On the strength of the above findings by this court, there is no requirement for this court to embark on a comparison of the term 'members' found in s 311(3)(a) of the 2016 Act as well as other parts of the 2016 Act which makes mention of the word member and members.

E **[41]** In the foregoing, the EGM notice dated 19 September 2019 requisitioned by the conveners was validly issued pursuant to s 310(b) of the 2016 Act.

F CONCLUSION

[42] Premised on the above reasoning, prayer 1 of the OS is therefore dismissed with costs.

G *Claim dismissed with costs.*

Reported by Mohd Kamarul Anwar

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